

IN THE MISSOURI COURT OF APPEALS WESTERN DISTRICT

COMPLETE TITLE OF CASE

STATE OF MISSOURI,

Respondent,

v.

ANTHONY L. TABORN,

Appellant.

DOCKET NUMBER WD74745

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: October 29, 2013

APPEAL FROM

The Circuit Court of Clay County, Missouri
The Honorable Anthony Rex Gabbert, Judge

APPELLATE JUDGES

Division Three: Karen King Mitchell, Presiding Judge, and Lisa White
Hardwick and Gary D. Witt, Judges

ATTORNEYS

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Attorneys for Respondent,

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Attorney for Appellant.



MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

STATE OF MISSOURI,)
)
Respondent,)
v.) **OPINION FILED:**
) **October 29, 2013**
ANTHONY L. TABORN,)
)
Appellant.)

WD74745

Clay County

Before Division Three Judges: Karen King Mitchell, Presiding Judge, and Lisa White Hardwick and Gary D. Witt, Judges

Anthony Taborn appeals his convictions, following a jury trial, for the unclassified felony of forcible rape, two class A felonies of first-degree robbery and first-degree assault, one class B felony of first-degree assault, and three counts of the unclassified felony of armed criminal action. After finding Taborn to be a prior felony offender, the court sentenced him to life imprisonment for forcible rape and each of the class A felonies, twenty-five years for the class B felony, and 100 years for each count of armed criminal action, with all sentences to run consecutively for a total of three life sentences plus 325 years. Taborn challenges both the admission of evidence that a witness had seen him with a gun on a different occasion and the length of the sentence he received for the class B felony. The evidence Taborn challenges was properly admitted, but the sentence he received on the class B felony was outside the statutorily permitted range of punishment.

AFFIRMED IN PART; REVERSED IN PART; REMANDED.

Division Three holds:

1. Generally, proof of the commission of separate and distinct crimes is not admissible unless such proof has some legitimate tendency to directly establish the defendant's guilt of the charge for which he is on trial.

2. To violate the rule prohibiting evidence of other crimes or misconduct by the accused, the evidence must show the accused committed, was accused of, was convicted of, or was definitely associated with, the other crimes or misconduct.
3. Vague references are not characterized as clear evidence associating a defendant with other crimes.
4. Eugene Brown's statement that Taborn and his co-defendant "may have had some [handguns] and did something" and that he had "seen them earlier before that week" is the epitome of vagueness and does not violate the prohibition on other crimes evidence.
5. The effect of being found to be a prior offender is that sentencing is removed from the jury. The range of punishment, however, is enhanced only with a finding of persistent offender status.
6. Here, Taborn was found to be a prior offender only; thus, the enhancement of his sentence to a twenty-five-year sentence for a class B felony was improper as the sentence was outside the statutorily permitted range of punishment. His sentence is reversed on the class B felony and remanded for resentencing on that count only.

Opinion by: Karen King Mitchell, Judge

October 29, 2013

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